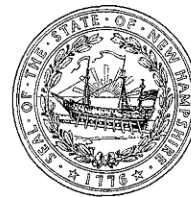




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

December 6, 2004

Thomas Flaherty, Vice President
Sprague Energy Corporation
2 International Drive
Suite 200
Portsmouth, NH 03801

Re: Docket No. AF 04-089 – Sprague Energy Corporation

Dear Mr. Flaherty:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on December 2, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

Michael Selafani,
Legal Assistant

cc: Robert R. Scott, Director, DES Air Resources Division
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Joseph Ritz, DES ARD
DES Public Information Officer



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Sprague Energy Corporation
2 International Drive
Suite 200
Portsmouth, New Hampshire 03801

**ADMINISTRATIVE FINE
BY CONSENT**

NO. AF 04-089

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources, and Sprague Energy Corporation pursuant to RSA 125-C:15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Sprague Energy Corporation ("Sprague") is a corporation incorporated under the laws of the State of Delaware and registered to operate in the State of New Hampshire, having a mailing address of 2 International Drive, Suite 200, Portsmouth, NH 03801.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution, RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner had adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner had adopted N.H. Admin. Rules Env-A 600.
4. Sprague operates a bulk gasoline terminal at its Avery Lane Terminal at 78 Patterson Lane, Newington, ("the Facility").
5. On August 31, 2000, and in accordance with RSA 125-C and provisions of 40 CFR 70, DES issued Title V Operating Permit No. TV-OP-030, ("the Permit") to Sprague for the operation of the Facility. The Permit expires on August 31, 2005.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-1370 • Fax: (603) 271-1381 • TDD Access: Relay NH 1-800-735-2964
DES Web site: www.des.nh.gov

6. Condition VIII.E.1, Table 7, Item 8 of the Permit requires Sprague to perform stack testing on the flare for its destruction of VOC emissions every three years, with the next compliance test to be performed by May 1, 2003.
7. Condition VIII.C.1, Table 6, Item 6 limits VOC emissions from the flare to 20 milligrams of VOCs per liter ("20 mg VOC/l") of gasoline loaded.
8. Condition VIII.C.1, Table 6, Item 10 requires the flare to destroy at least 90 percent of all the VOCs emitted from the tank truck loading operation.
9. On May 6, 2003, Sprague conducted a compliance stack test on the flare. The results of the stack test showed that Sprague failed to meet the emission limits of the Permit. The flare emitted 23 mg VOC/l of gasoline loaded, and achieved a destruction efficiency of 88.38 percent of the VOCs emitted from the tank truck loading process.
10. On May 7, 2003, DES received a letter from Sprague reporting the cause of the failed test. Sprague discovered that at the beginning of each combustion cycle, there was a delay in the ignition of gasoline vapors before being combusted in the flare. Sprague further stated that the flare was scheduled for service on May 20, 2003.
11. On May 21, 2003, Sprague retested the flare. The results of the stack test showed that VOC emissions from the flare were 8.63 mg/l of gasoline loaded, and the destruction efficiency of the flare was 96.48 percent.
12. On May 30, 2003, DES received a follow-up letter from Sprague regarding the results of the May 6, 2003, stack test. The letter stated that on April 3, 2003, the burner of the flare was replaced as a result of periodic maintenance. After failing the May 6, 2003 stack test, Sprague found that the new burner was cracked, resulting in excess VOC emissions.
13. Sprague estimates that the flare may been malfunctioning for 49 days, from the time of installation of the replacement burner on April 3, 2003, until the burner was replaced on May 20, 2003. Sprague estimates that from April 3, 2003 through May 21, 2003, it emitted 0.215 tons of excess emissions.

IV. ALLEGATIONS

1. Sprague violated Condition VIII.E.1, Table 7, Item 8 of the Permit by failing to perform stack testing on the flare by May 1, 2003.
2. Sprague violated Condition VIII.C.1, Table 6, Item 6, of the Permit by emitting greater than 20 mg of VOC per liter of gasoline loaded to the tank trucks.
3. Sprague violated Condition VIII.C. 1, Table 6, Item 10 of the Permit by failing to meet minimum 90 percent VOC destruction efficiency required of the flare.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING


1. DES is not seeking a fine for the violation identified in Paragraph IV.1 due to the short length of the violation.

2. Pursuant to RSA 125-C, DES has determined that the violation identified in Paragraph IV.2 above is a minor deviation from the requirements with a major potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of \$851-\$1,500. DES is seeking a fine of \$1,500 for this violation.
3. DES is not seeking a fine for the violation identified in Paragraph IV.3, since this violation is addressed by the penalty specified in Paragraph V.2 for the violation identified in Paragraph IV.2.
4. Sprague agrees to pay a total administrative fine amount of \$1,500 upon execution of this Agreement.
5. The payment under Paragraph V.4 above shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

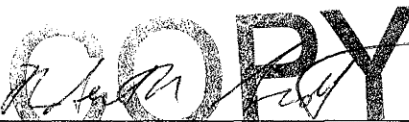
6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
7. By executing this Administrative Fine by Consent, Sprague waives its right to a hearing on or any appeal of the administrative fines identified in Section V. Paragraphs 1 through 3, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Sprague shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Sprague and alleging violations of the New Hampshire Code of Admin. Rules enumerated herein, or in any proceeding before DES to enforce this agreement. Other than such an enforcement action, DES shall pursue no further administrative action against Sprague relative to the allegations contained herein.
8. The effective date of this Administrative Fine by Consent shall be the date on which it has been signed by an authorized representative of Sprague, the Director of the Air Resources Division, and the Commissioner of DES.
9. No failure by the Division to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

Sprague Energy Corporation



Duly Authorized

Date: 11/29/04

Department of Environmental Services


Robert R. Scott, Director
Air Resources Division

Date: 12/2/04


Michael P. Nolin, Commissioner
Department of Environmental Services

Date: 12 02 04

cc: R. Kurowski, EPA, Region 1
G. Hamel, DES Legal Unit
J. O'Reilly, Chairman of Selectmen, Town of Newington
AFS # 3301500041